

**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

Weiskopf  
2411

**FILE:** B-209423

**DATE:** January 24, 1983

**MATTER OF:** Environmental Tectonics Corporation

**DIGEST:**

1. Where the agency is willing to accept a longer delivery period than stated in the RFP and decides that the date of delivery should be a critical evaluation factor although it is not listed as such in the RFP, the agency generally must inform all offerors of the changes and permit them an opportunity to revise their proposals.
2. Protester offering a delivery period of 180 days in response to a required delivery time of 35 days is not prejudiced by agency's failure to amend requirement prior to accepting another offer with a 90-day delivery period where protester admits it could not have bettered its own proposed delivery time.

Environmental Tectonics Corporation (ETC) protests the award of a contract to American Sterilizer Co. (AMSCO) under request for proposals (RFP) No. DADA03-82-R-0050 issued by the Fitzsimons Army Medical Center. The RFP sought offers to supply the Center with a specific AMSCO model sterilizer or equal, and listed certain salient characteristics which any model offered as equal had to meet. ETC offered an allegedly equal model at a lower price than AMSCO offered for the brand name model, but the Army rejected ETC's offer because it purportedly failed to demonstrate compliance with the salient characteristics and because it offered a considerably longer delivery period than AMSCO's offer. ETC contends it promised to comply with the salient characteristics during discussions with the contracting officer, and points out that AMSCO also offered a delivery period exceeding that requested by the RFP.

We deny the protest.

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The RFP provided that award would be made to the responsible offeror whose proposal conformed to the solicitation and offered the lowest price. ETC offered a price of \$44,509 and AMSCO a price of \$45,339.95. Neither offer, however, conformed to the solicitation's delivery requirements. While the RFP required delivery within 35 days after the offeror received the notice of award, AMSCO offered a delivery period of 90 days and ETC a period of 180 days.

The contracting officer made award to AMSCO and rejected ETC's offer because of its failure to demonstrate compliance with certain salient characteristics. ETC subsequently filed a protest with the Army, after which the Chief of the Contracting Division took the matter under consideration and caused a stop-work order to be issued pending his decision. The Chief reviewed the matter and determined the award to AMSCO was justified on the basis of the shorter delivery period, notwithstanding the contracting officer's decision that ETC's offer allegedly failed to meet the salient characteristics. The Chief issued a determination and findings (D&F) in which he stated:

"Delivery is critical and should have been a major consideration in the determination for award. This is especially true in that [the location] where the sterilizer is to be installed, is a 24 hour operation and with the historical[ly] erratic operation of one of the sterilizers and the age of another, it is not in the best interest of the Government to delay the delivery any longer than possible."

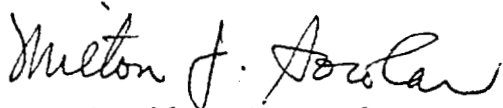
The Chief also stated in the D&F that the contracting officer orally had requested each offeror to better its delivery date, but both responded they could not do so. (ETC confirmed this in its protest letter to the Army.) The Chief therefore concludes that the award to AMSCO was proper, based on the evaluation of both offers' delivery periods.

An agency generally is not free to award a contract on terms that materially vary from those upon which the competition was based, and a revision of the required delivery schedule constitutes a material change. See Delta Systems Consultants, Inc., B-201166, June 23, 1981, 81-1 CPD 519. When, as here, an agency decides it is

willing to accept a proposal that deviates from the material requirements of the RFP, the agency generally must amend the solicitation, or at the least inform all offerors of the revised needs and furnish them an opportunity to submit a proposal on the revised requirements. Squibb-Vitatek, Inc., B-205306, July 27, 1982, 82-2 CPD 81. Here, even though the Army placed the offerors on notice that it would accept a longer delivery period than specified in the RFP, it is not clear from the record that the offerors were informed that the relative advantages of the delivery periods offered would be a critical award factor.

We will not disturb an award, however, even where the agency fails to inform offerors of changed requirements or evaluation factors, if the protester suffers no prejudice. See Delta Systems Consultants, Inc., *supra*. While the Army should have advised ETC and AMSCO of its willingness to accept a longer delivery period than 35 days and of the delivery period's importance as an evaluation factor and given both offerors an opportunity to revise their proposals, ETC was not prejudiced by the Army's failure to do so since ETC has admitted it could not have bettered its proposed delivery date in any event. We therefore do not object to the award, and find it unnecessary to consider whether ETC's offer was otherwise acceptable or otherwise reasonably susceptible to being made acceptable through discussions.

The protest is denied.

*for*   
Comptroller General  
of the United States